

SPECIAL COUNCIL MEETING

JULY 9, 2013

The Special Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Tuesday, July 9, 2013 at 1:33 p.m., after which the following members answered the call of the roll:

Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura (*present at 1:34 p.m.*)
Honorable Jay Furfaro

Excused: Honorable Tim Bynum

APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda as circulated, seconded by Ms. Nakamura, and carried by a vote of 6:0:1 (Councilmember Bynum was excused.)

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

Chair Furfaro: Although we have one (1) agenda item today, if there is anyone that would like to speak on that note. If not, I would like to read the Executive Session by notice of the County Attorney and then I will take public comment. May I have the County Attorney up, please? We have a question posed to the Clerk, Mr. Kagawa, you have the floor.

Mr. Kagawa: Just hearing the Clerk read...so, from now on we are going to stick to that rule where only eighteen (18)...up to eighteen (18) minutes total will be given to people who want to speak on any item, right?

Chair Furfaro: I have changed the format of the outline. The Rule that was just read – 13(e) was something that was incorporated over a year and a half ago. I read it and now it is actually part of the posting. So, it is not a deviation. It is actually in writing now. If we get to the eighteen (18) minutes or we call the meeting to order and the first six (6) people signed up then obviously the seventh (7th) person that signed up knows that they cannot take advantage of that privilege. They will have to wait till the regular calendar. This is only a written clarification of what our policy states.

Mr. Kagawa: If there is a special circumstance, would the Council deviate from that Rule? There may be an instance where a lot of people want to speak on an item that may come up way later in the evening, so, are we going to strictly stick to that eighteen (18) minute Rule?

Chair Furfaro: That would be at the discretion of the Chairman and I would consider that if something is there and like I have done in the past.

Mr. Kagawa: Thank you, Chair.

Chair Furfaro: May I have the County Attorney up, please?

There being no objections, the rules were suspended.

MARC E. GUYOT, Deputy County Attorney: Good afternoon Chair, Vice Chair, and Councilmembers. With respect to ES-649.

EXECUTIVE SESSION:

ES-649 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4) and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an executive session with the Council, to consult with Special Counsel relating to the investigation of personnel matters involving the Office of the County Auditor and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Mr. Rapozo moved to convene in Executive Session for ES-649, seconded by Ms. Nakamura.

Chair Furfaro: Before we go into Executive Session, is there anyone in the audience that wishes to testify?

GLENN MICKENS: You have a copy of my testimony and obviously this is my opinion. It may not be the opinion of others but it is my opinion and it is basically about the Auditor. Let me read it for the viewing public please. A huge *mahalo* to our County Auditor Ernie Pasion and his Staff for getting basically a five (5) star rating from a non-partisan peer group for their outstanding work from January 2011 to December 2012, a two (2) year period and a big thank you to The Garden Island and Tom LaVenture for making it known to the public.

The Peer Review Group covered every aspect of what is expected of the Audit, quote...I am quoting from Tom LaVenture's column. Now, whether that is actual – Ken has some more material on that coming actually from the Peer Review Group. Anyway the report observation said, "The Office excelled with implementing changes to comply with standards and that audit staff excelled at professional growth and certifications." We citizens of Kaua'i particularly those of us who stay active with government operations are so grateful to know that we have an Auditor's Office who did six (6) audits in just two (2) years. He did them so well that the Association of Local Government Auditors' Peer Review Group not only approved of what they did but gave them accolades for going above and beyond

what was expected of them. For a start up operation, Pasion and his Staff did not just do simple audits such as inventory counts or doing cash counts but did audits dealing with complex issues.

This writer in particular salutes Mr. Pasion for his accomplishments as he was one of the biggest doubters that Ernie could ever be then completely neutral person that this position required. He had been our Deputy County Clerk, as you members all know, for almost thirteen (13) years before our Council by a wise, unanimous 7:0 vote hired him as the first Auditor for the County.

My concerns, as the biggest doubter of him were that Mr. Pasion would put his personal feelings of an audit before the way an audit should be done objectively according his bible, "The Yellow Book," the County Charter, or State Constitution. He took his oath of Office and has been doing the job of a County Auditor according but I could have never been more wrong. He and his Staff did an audit on our County roads, an issue I had pursued for eighteen (18) years. I gave them hundreds of pages of showing gross inefficiencies in the construction and resurfacing of our roads and they ran with it. Their report came back in a clear concise booklet showing the many problems associated with our roads that truly need fixing. Their other five (5) audits were the same and the reports were easy for any lay person to read and interpret. My reading of the Roads Maintenance Audit is that the County Administration agreed entirely with their findings and recommendations. However, most of the recommendations to their findings on the audits have yet to be implemented by the County Administration and the County Council.

Chair Furfaro:

First three (3) minutes, Glenn.

Mr. Mickens: Thank you. All of us can only hope that this dedicated Auditor and his Staff are given whatever budget they need to continue their valuable work that will save our government millions of dollars. The Energy Audit reported that if the County implemented the recommendations of the Cost Control Commission, the County could have saved one point three million dollars (\$1,300,000). The County Manager would be a great asset to our Audit to help put some teeth into any of his negatives findings, teeth that are not now available. A County Manager form of County government would, in my opinion, eliminate the back and forth unproductive politics between the Executive and the Legislative branches of our County government.

Bravo again to Mr. Pasion and his Staff as they have proven to be the watchdogs that we so badly need. Alice Parker gave me her testimony and you got a copy of it. It is a little hard for me to read but you got a copy. She basically just completely supports Ernie and the work that he and his Staff have done over the years. So, I will not try and read hers but you do have a copy of it. This is my opinion about our Auditor's Office. I do hope that we have some mechanism, like I am pointing out, a County Manager, some mechanism to have teeth in what he finds out. Even with our Auditor on O'ahu, she had no real teeth work but she had a bigger media than we have over here. She can go to the television, the major papers over there and...Marion Higa, I thought she just did an excellent job of what she did but we do not have that. I hope we can get some type of thing so we can put teeth in it. Thank you, Jay, for allowing me to have my testimony read.

Chair Furfaro:

Thank you, Glenn. Any other speakers?

JOE ROSA: Good afternoon members of the Council. One of the few times that I have given you written testimony on behalf of the Auditor's Office. It is addressed to Chairman Jay Furfaro and the Council Staff. Why do we have to correct a right when there is no wrong? The letter that I have is for the record and that is why I put it in letter form but there are a lot of things that I want to put in between the lines in accordance with my letter. I started out, why correct a right when there is no wrong? Ernie Pasion, the audits that I have read so far, he has done an excellent job in collecting all that information that is in his audits. It is really worth the reading that I think all taxpayers should have the privilege of reading those things and that is why I emphasize in my letter that we should have this open to the public. The Council should hold their own internal investigation because there are too much irregularities going on in this County system. In the letter that I have quoted, I said that Ernie Pasion ever since he came onboard in his Office when he was appointed to the position, he took a job and he took it by the horns. He went and did what he had to do and it had to be done. What he did was something that a person would need a lot of courage and guts to do what he has done. It is only the truth that is going to come out. A lot of times when things like this - irregularities are going on the truth hurts and his would fall. Already you can see some of the members of the Staff are jumping the ship because it is starting to sink. It is leaning on one (1) side already. So, the members are jumping the ship. Those are the kinds of things that I give Ernie Pasion, his Staff, and more so like as I say, him, to take the thing by the horns and do what is needed to be done. It takes guts and courage.

Chair Furfaro:

That is your first three (3) minutes, Joe.

Mr. Rosa: I want to emphasize again that Ernie is doing his job for what he is getting paid to do the work of the Auditor's Office. Ernie can stand tall and hold his head high for a job that he is doing which I could say that it is excellent. What he is doing is right and there is no wrong. As I said, Ernie Pasion has done a very excellent job and I rate him a ten (10) of a scale of ten (10). I would like to see that his Office and Staff be maintained and in fact enlarge a little so they can get more work done. Let the taxpayers of Kaua'i know how their money is being spent. So, hats off to Ernie and his Staff with my and the public's regards. Thank you.

Chair Furfaro:

Thank you. Lonnie?

LONNIE SYKOS: Good afternoon Council Chair and Councilmembers. Thank you for the opportunity to speak today. The matter before the Council today is an Executive Session about the civil rights and labor law violation that the Office of the County Attorney's are accused of, if I understand what we are here for today. That the County is being sued...

Chair Furfaro:

What we are here for is what is posted in the posting. It is a personnel matter.

Mr. Sykos: Correct. This personnel matter that we are here before, although I am a supporter of the Auditor and a supporter of increased funding for the Auditor, that is not the issue before us today. It is whether or not the County should continue to expend funds in regards to the lawsuit presented against the County regarding the Auditor and the Auditor's Office. In this matter, I would spend as much money as it takes to defend the Auditor's Office. This points out that the County has a larger problem which is our dysfunctional Human

Resources Department which is the reason that lawsuits are occurring. As part of the defense of our Department Heads in our Departments, the County needs to take a look at what is it going to take to actually fix what is wrong with our HR system which is the reason that we are all here today – HR is broken. HR is broken and it is demonstrated because we continually get sued over HR issues that we should not be getting sued over. We do not have in place the structures within our HR to guarantee that civil rights and the compliance with labor law to the satisfaction of a Judge and Jury which is why we continually have settlements either against us or we settle out of Court. When we settle out of Court, we hide the terms of the settlement so the public is unaware of the details of what is wrong with our Human Resources. In this matter, I have no idea what occurs on a day to day basis within the Auditor's Department. I can make no judgment about whether or not the charges have merit however I have witnessed the operation of the Auditor's Department and the Auditor's Department appears to function well based upon the audits that they have produced. I, as a personal opinion with no merit and no fact simply point out that anyone who has a background in labor law can view the County of Kaua'i as an opportunity to get employed and then sue us. We are settling in Court and defending ourselves with an indefensible defense in some matters.

Chair Furfaro:

Three (3) minutes, Lonnie.

Mr. Sykos: Thank you. And so in this matter, I believe that we should be defending our Auditor but the greater issue for us is, "how are we going to end these types of lawsuits in which when it comes to go to Court, we once again will be faced with most likely another indefensible defense and settle out of Court." I am here to both promote protecting the Auditor's Office from this lawsuit, protecting the public from the expense of having to settle the lawsuit, and to encourage the Council to continue doing good work that you have been doing through the years to bring about fundamental changes in our Human Resources. I would also like to express my thanks to the Chairman, in particular, and to the other Councilmembers who through the years were instrumental in helping the public get put on the ballot and create the Auditor's Department and I would like to thank the Chairman here publicly for his tremendous support in funding and promoting the function of the Auditor's Department. We as citizens have an absolute civil right to an open government. We have an absolute right to transparency in what occurs within the government in regards to the spending of our money, the generating, and the enforcement of policy. The public sees that we do have tremendous problems still within our HR system which is impacting all the rest of the government operations. So, I thank you for the good work that you have done in the past and that you continue to do. I encourage you to *imua* and push forward and to come about with a final resolution for our HR Department problems which are part and parcel of why we are here today. Thank you very much for your time and consideration.

Chair Furfaro:

Thank you, Lonnie.

KEN TAYLOR: Thank you for this opportunity. I first have a question about the agenda item. It says the Office of County Attorney on behalf of the Council request an Executive Session with the Council to consult with Special Counsel relating to an investigation of personnel matters involving the Office of the County Auditor and related matters? I am not sure if this is talking about personnel matters with the Department Head or if it is an employee of the Department. I do not understand related matters. If you could explain that to me?

Chair Furfaro: I certainly will explain it to you. This is as it says right here, "an investigation of personnel matters involving the Office of the County Auditor." I cannot disclose to you anything else other than it is a personnel matter that is reviewed in Executive Session. You may be quite aware of the fact that there is an internal challenge and grievance to a departure of employees within that Department.

Mr. Taylor: And related matters?

Chair Furfaro: And related matters. The process...

Mr. Taylor: What are related matters?

Chair Furfaro: I am just explaining to you the process and the system for a reprimand or termination or any exposure that the County might have on a personnel matter.

Mr. Taylor: Then I would have to assume as others have that we are talking about the Department Head and I would like to first go back to the workshop that was held last year, almost a year ago, by the Director of Personnel Services – Workplace Violence Training. There were a number of days that this activity was taking place and all employees, supervisors, Managers, and Department Heads were to attend one of the training programs. Why I am bringing this up is because on tomorrow's agenda there are three (3) items for allocating moneys for defending different County people. I have not seen to date any money allocated to defend the Auditor's Department or whoever we are talking about in that particular case. Again, assuming – we must be assuming that it is the County Auditor, himself. Why are we not giving money to protect his situation? In the workshop that took place last year it says, the alleged employee must be given the opportunity to know the allegations brought forth, present testimony to dispute the allegations and to obtain representation.

Chair Furfaro: That is the first three (3) minutes.

Mr. Taylor: I do not think that any of these items have taken place. If I am wrong you can correct me but three (3) items, this says, the alleged employee must be given the opportunity to know the allegations brought forth. Has that happened? Question one.

Chair Furfaro: Here I will give you the answer. Whether it happened or not, it is not for you to assume it would not happen. That is the Rule. Everyone here at the Council table attended and signed off on the workshop that dealt with those employee rights but you used that term, not the Council Chair, not the Councilmembers. It will happen. What you assume is strictly...

Mr. Taylor: I am not assuming anything.

Chair Furfaro: I am only answering your question, Ken.

Mr. Taylor: Jay, I am only asking. The alleged employee must be given the opportunity to know the allegations brought forth. Has that happened? Present testimony to dispute the allegations, has that happened?

Chair Furfaro: I answered you.

Mr. Taylor: Obtained representation.

Chair Furfaro: I answered you. Do not assume that we would not follow the policy and the approach to getting a fair and appropriate time to any employee. It is an Executive Session, Ken, and you are not privy to that.

Mr. Taylor: I understand. I am asking has the employee, whoever that person is, been giving these opportunities? Is the answer yes or no?

Chair Furfaro: I have answered your question.

Mr. Taylor: The other part of this whole problem is that in recent years we had Elections to establish the Parks and Recreation Department, County Auditor but we seem to have a Human Resource Department that was never, to my knowledge, on the agenda to vote on whether or not the community wanted a Human Resource Department. So, I am questioning whether or not this Department is legally in place or not. To an earlier comment that basically came out of the newspaper, I would just like to read the second paragraph or part of the second paragraph. In the letter from the Association of Local Government Auditor's and this was dated June 6, 2013. We would like to mention some of the areas in which we believe your Office excels and it list a number of areas and I think this is where some of the confusion comes to say well there are only three (3) options that he has done the job, did not do his job, or there is something in between.

Chair Furfaro: That is your six (6) minutes.

Mr. Taylor: And so...

Chair Furfaro: Ken that is your six (6) minutes.

Mr. Taylor: I hope you can understand from the documents that were generated from the Association of Local Government Auditors...

Chair Furfaro: Ken?

Mr. Taylor: ...they did...

Chair Furfaro: Ken, let me answer your question because your time is up. Do not believe everything you read in The Garden Island. Okay. I am going to answer your question. What Mr. LaVenture mentions in his article – none of those criteria appears in the audit specification. There is no check mark for excellent, and there is no check mark for outstanding performance. There was the following. You have an acceptable level, you have a need improvement level, and you have a failure level. That is it. All the other testimony that was given in The Garden Island is – they used the term “we,” third person plural; in their opinion. That is not part of the review. I am answering your question.

Mr. Taylor: I am only reading from the letter signed by Michael Taylor and Bill Green who did the Audit Review.

Chair Furfaro: And I am telling you on the actual Audit Review there was only three (3) grading levels and I gave them to you. Number two (2), I want to say that this is the whole reason we are having the discussion in Executive Session. We give you the public an opportunity to give us some feedback but the matter is done in Executive Session because it is a personnel matter. It is that sensitive. Now, I hope I have answered your question. You had your time.

Mr. Taylor:

Thank you.

Chair Furfaro: Carol, I would like to say hello and welcome. For those of you that do not know that when I was the Manager at Sheraton Kaua'i, Carol was my Personnel Director.

CAROL NACION: Excuse me, I am winded from climbing your stairs. It is a challenge for an eighty-five (85) year old lady like me.

Chair Furfaro: elevator.

You look outstanding and we do have an

Ms. Nacion: I am here today to testify on the character and integrity of my friend, Ernie Pasion, our current County Auditor. Whatever personnel issues that the County has on Ernie is a matter that I am not fully informed of and I am not going to pretend that I know what they are. I do know that Ernie was hired to do audit on all of the County Departments. In my humble opinion Ernie will report his findings honestly no matter who or what is involved. I think that is what we pay him for. I have known Ernie for over ten (10) years. He is the trusted member of our Parish Finance Committee. He served as Treasurer, Vice President, and Auditor of our famous Filipino Catholic Club. Ernie is respected as a person who gives of his time, talent, and treasure without expectations of reward. Ernie has a high standing amongst all of us, the Filipino community on Kaua'i and on O'ahu. I hope that my humble testimony will help in your decision regarding Ernie as the Auditor. Before I leave, I would like to thank all of you and commend all of you for the energy and time and...I watch you all the time so I have grades for each one of you and it is outstanding.

Ms. Yukimura: I just want to thank you for being here. Carol as my appointee to the Civil Service Commission. Thank you for your eloquent and professional presentation and for understanding the distinction of personnel issues. You really have put that well and that is of course because you are so well versed in the area. Thank you, Ernie, is certainly lucky to have you as a friend and supporter.

Chair Furfaro: Thank you, Carol. Before I close this session, I want to make an announcement. I have received from the County Auditor on July 5th and I want to make sure we have some clarity. When the audit is complete, we first get a draft form and then we get the final after it is reviewed. We have the final to be scheduled on the three (3) items. In request in writing from the Auditor on or around August 14th to have Manthos Engineering presence so that we will follow-up on the final report – Kilauea Gym, Kaiākea Fire Station, and the Road Maintenance Program in its final version as it was shared with us with Mr. Mickens. Request from the Auditor will be on August 14th posting. On that note, is there anymore testimony?


The motion to convene in Executive Session for ES-649 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

ADJOURNMENT.

There being no further testimony on this matter, the Special Council Meeting adjourned at 2:08 p.m.

Respectfully submitted,



RICKY WATANABE
County Clerk

:dmc

